(1)

No. 06-724

FILED
MAR 13 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

CHARLES CONNELL McCARTHY,

Petitioner,

v.

THE SUPREME COURT OF CALIFORNIA,
THE STATE BAR OF CALIFORNIA and
THE STATE BAR COURT OF CALIFORNIA,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of California

PETITION FOR REHEARING

CHARLES CONNELL MCCARTHY, *pro se*
A member of the Supreme Court Bar
since March 20, 1961
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Encino, CA 91426
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PETITION FOR REHEARING

Petitioner Charles C. McCarthy prays that **The Supreme Court of the United States** vacate its "**Petition Denied**" order of Feb. 20, 2007 on the following grounds:

1. Respondent's **STATE BAR** and **STATE BAR COURT** have – continuously to the date of the filing of this **Petition for Rehearing – knowingly, willfully and fraudulently** refused to comply with the express, unambiguous provisions of California Business and Professions Code **§6081**, to wit:

> "Upon the making of any decision recommending the disbarment or suspension from practice of any member of the State Bar, the board shall **immediately** file a certified copy of the decision together with the transcript and the findings, with the Clerk of the Supreme Court." (emphasis added) (See App. E ¶2 App. 6, 7 Petitioner's **VERIFIED PETITION FOR ORDER DIRECTING THE REVIEW DEPARTMENT OF THE STATE BAR COURT TO IMMEDIATELY COMPLY WITH BUSINESS AND PROFESSIONS CODE §6081**) (Filed Jul. 5, 2006)

In so doing, **THE STATE BAR** and members of **THE STATE BAR COURT** have knowingly, intentionally, flagrantly and fraudulently violated their duties as officers of the Court thereby **knowingly, willfully,** and **fraudulently** committing numerous acts of **moral turpitude, dishonesty** or **corruption** in patent violation of State Bar Act **§6106** – thereby proximately causing Petitioner to suffer severe damages to his good name and reputation earned since his Honorable Discharge from the United

States Navy in **1946** – after having served on Navy torpedo boats and in the Navy Air Corps.

2. Attached as Petitioner's EX 1 is a true and correct copy of the **"WAIVER SUPREME COURT OF THE UNITED STATES** Supreme Court Case No. 06-724 CHARLES CONNELL McCARTHY (Petitioner) v. THE SUPREME COURT OF CALIFORNIA (Respondent)" which states:

"**I DO NOT INTEND TO FILE A RESPONSE** to the petition for a writ of certiorari unless one is requested by the Court."

There follows a request to "Please enter my appearance as Counsel of Record for the following respondent(s):

THE STATE BAR OF CALIFORNIA
THE STATE BAR COURT

"I certify that I am a member of the Bar of the Supreme Court of the United States."

The illegible signature is followed by:

"Date: December 1, 2006" then – the typed name of "Tracey L. McCormick" – "The State Bar of California – Office of General Counsel"

THE STATE BAR OF CALIFORNIA and THE STATE BAR COURT thereby falsely and fraudulently intended to deceive the **SUPREME COURT OF THE UNITED STATES** into believing that THE STATE BAR OF CALIFORNIA and THE STATE BAR COURT, had in fact **"immediately"** filed **a certified copy of the decision together with the transcript and the findings, with the Clerk of the Supreme Court** of its **"OPINION ON REVIEW AND ORDER"** in compliance with Business and

Professions §6081. As their representatives well knew – **this was patently false!** (See App. E pp 6-9).

3. Attached hereto as Petitioner's Ex 2 is a true and correct copy of an 11-page document entitled **"REVIEW DEPARTMENT OF THE STATE BAR COURT – OPINION ON REVIEW AND ORDER"** (**"FILED** May ~~08~~", handwritten above "05 PR" 2006) Typed in bold across the top of p1: **"PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION"!**

There follow significant excerpts from the State Bar Court's **OPINION ON REVIEW AND ORDER**:

The Hearing

"On December 1, 2004, the hearing in this matter commenced. . . . At that time, counsel for respondent made an oral motion for a continuance based on the fact that respondent's witnesses had not been subpoenaed to attend the hearing. **Counsel also stated that because the two cases had been consolidated, respondent was not aware of the issues to be tried.** The court denied the motion . . . "! (p3)

"Respondent was then called as a witness by the State Bar pursuant to Evidence Code section 776, and upon being sworn, he stated, '**I respectfully decline to testify on the grounds that there is no way that this matter can be heard within two days,** as has been indicated, despite the response that I made and the statement under the **"N"** [case] in this proceeding that our case would take five days. **In addition,** I am reluctant to call upon two very busy gentlemen who are my character witnesses, risking that they would come down here to testify in my behalf and might find that, for one reason or

another, that their testimony would not be accepted. Those are basically and essentially the reasons that I refuse to proceed. **They involve fundamental constitutional questions of notice and opportunity to be heard.** So I will not testify at all in these proceedings, and request that the matter be put over until sometime after the first of the year, with the joint consent of me, as respondent, through my counsel, the State Bar and the Court.'" (p4) (emphasis added)

"**RECOMMENDED DISCIPLINE**

We recommend that Charles C. McCarthy be disbarred and his name be stricken from the roll of attorneys in this State." (p10)

4. The record does **not** show that the State Bar has ever served – by lawful Proof of Service – a **"certified copy"** of the **STATE BAR COURT's** alleged **OPINION ON REVIEW AND ORDER** on:

3.1 Petitioner; or

3.2 The Supreme Court of California; or

3.3 The Supreme Court of the United States!

5. The State Bar's recommendation **"that Charles C. McCarthy be disbarred and his name be stricken from the roll of attorneys in this state"** is mortally flawed!

First, Respondent's **counsel** stated that "because the two cases had been consolidated, **Respondent was not aware of the issues to be tried."** – thereby presenting obvious fundamental Constitutional issues of **notice** and an **opportunity to be heard** under the 1st and 14th Amendments of the U.S. Constitution! The State Bar Judge nonetheless **summarily** "denied the motion"!

Second, when called as a witness by the State Bar pursuant to Evidence Code section 776, and upon being sworn, Respondent testified:

> "**I respectfully decline to testify on the grounds that there is no way that this matter can be heard within two days,** as has been indicated . . . **in addition,** I am reluctant to call upon two very busy gentlemen who are my character witnesses, risking that they would come down here to testify in my behalf and might find that, for one reason or another, that their testimony would not be accepted. Those are basically and essentially the reasons that I refuse to proceed. **They involve fundamental constitutional questions of notice and opportunity to be heard.** So I will not testify at all in these proceedings, and request that the matter be put over until sometime after the first of the year, with the joint consent of me, as respondent, through my counsel, the State Bar and the Court." (p4) (emphasis added)

The State Bar Court then **forthwith** recommended **"that Charles C. McCarthy be disbarred and his name be stricken from the roll of attorneys in this state".**

The State Bar Court thereby crucified Respondent Charles C. McCarthy – to preserve and protect the political power and influence of the California State Bar – an **apparatchik** blindly driven to survive despite the constraints of **due process and the rule of law!**

6. Never again may any member of the California Bar "be disbarred from the practice of law and that his name be stricken from the roll of attorneys" – **without oral argument – without a *judicial* hearing – without a**

written *judicial* decision – and without a meaningful *judicial* review of the important federal **ISSUES PRESENTED.** (Writ of Certiorari p1) Even California attorneys are entitled to due process and equal protection of the law under both the California and U.S. Constitutions – particularly an attorney who will be **85** years of age on August 18, 2007 – God willing!

7. And never again should the California Bar be permitted to avoid filing their Verified responses to a verified Petition charging that the **State Bar** and/or "members of the **State Bar Court 'willfully'** committed acts involving **'moral turpitude'** in violation of **Rule 1-100,** Rules of Professional Conduct and State Bar Act §6106 respectively!" as alleged in Paragraph **4.** (p2) of Petitioner's SUPPLEMENT TO VERIFIED PETITION dated August 3, 2006. (Writ of Certiorari App. 44 of App. G)

8. *This* **Supreme Court of the United States** is duty bound by "the Jealous Mistress of the Law" – to forthwith protect and preserve – indeed, **re-establish** the **rule of law** under the U.S. and California Constitutions – even for members of the California Bar who must never again be deprived of the right to practice law – **without oral argument – without a *judicial* hearing – without a written *judicial* decision – and without a meaningful *judicial* review** of the important federal **ISSUES PRESENTED.** (Writ of Certiorari p1)

9. The repeated malicious, fraudulent violation of the fiduciary duties of the State Bar and The State Bar Court referred to, in part, above – proximately caused Petitioner to suffer severe damages as follows:

a) compensatory damages, including the reasonable value of Petitioner's time expropriated by the STATE BAR and the STATE BAR COURT;

b) Bad faith – punitive damages [(Civil Code §3294(a) – "a court must consider **(1)** whether the conduct involved repeated actions or was an isolated incident, **(2)** whether the harm was the result of **intentional malice, trickery, or deceit** or simply an accident, **(3)** whether the harm caused by **physical or economic, (4)** whether the target of the conduct had financial vulnerability." (*State Farm Mut. Auto. Ins. Co. v. Campbell, et al.,* 123 S.Ct. 1513 (2003))".]

WHEREFORE, Plaintiff prays judgment against defendants, and each of them as follows:

1. For general damages, including pain and suffering;
2. For special damages, according to proof;
3. For exemplary or punitive damages;
4. For costs of suit incurred herein; and
5. For such other and further relief as the court may deem proper.

Respectfully submitted,

CHARLES C. MCCARTHY, *pro se*
A member of the Supreme Court
Bar Since March 20, 1961
P.O. Box 261182
Encino, CA 91426
Telephone: (818) 981-1391

CERTIFICATE OF COUNSEL

I hereby certify that this Petition for Rehearing is submitted in good faith and not for delay. This Petition for Rehearing is restricted to the grounds set out in Rule 44.2.

Charles Connell McCarthy

EXHIBIT 1

WAIVER

SUPREME COURT OF THE UNITED STATES

Supreme Court Case No. 06-724

CHARLES CONNELL MCCARTHY	v.	**THE SUPREME COURT OF CALIFORNIA**
(Petitioner)		(Respondent)

I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of certiorari unless one is requested by the Court.

Please check one of the following boxes:

☐ Please enter my appearance as Counsel of Record for all respondents.

☑ There are multiple respondents, and I do not represent all respondents. Please enter my appearance as Counsel of Record for the following respondent(s):

THE STATE BAR OF CALIFORNIA (erroneously named as The Supreme Court of Califo: THE STATE BAR COURT

I certify that I am a member of the Bar of the Supreme Court of the United States (Please explain if your name has changed since your admission):

Signature /s/ _____

Date: December 1, 2006

(Type or print) Name Tracy L. McCormick

☐ Mr. ☑ Ms. ☐ Mrs. ☐ Miss

Firm The State Bar of California – Office of General Counsel

Address 180 Howard Street

City & State San Francisco, California Zip 94105

Phone (415) 538-2339

A COPY OF THIS FORM MUST BE SENT TO PETITIONER'S COUNSEL OR TO PETITIONER IF *PRO SE*. PLEASE INDICATE BELOW THE NAME(S) OF THE RECIPIENT(S) OF A COPY OF THIS FORM. NO ADDITIONAL CERTIFICATE OF SERVICE IS REQUIRED.

SEE REVERSE FOR INFORMATION CONCERNING THE STATUS OF A CASE ON THE DOCKET.

CC: **CHARLES C. McCARTHY**

EXHIBIT 2

PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of	**03-N-02791; 04-0-11745**
CHARLES C. McCARTHY,	**OPINION ON REVIEW AND ORDER**
A Member of the State Bar.	(Filed May ~~08~~ [05 /s/ PR], 2006

Respondent, Charles C. McCarthy, was found culpable of failure to timely comply with rule 955 of the California Rules of Court[1] as ordered by the Supreme Court of California, failure to comply with conditions of probation, and acts involving moral turpitude. After a hearing, without the participation of respondent, the hearing judge recommended five years' stayed suspension and five years' probation on condition of four years' actual suspension. The State Bar requested review, contending that disbarment is the appropriate discipline.

Our independent review of the evidence *(In re Morse* (1995) 11 Cal.4th 184, 207) leads us to the conclusion that respondent is culpable of the charges and that respondent's failure to comply with rule 955 was wilful. For reasons discussed *post,* and relying upon the applicable

[1] Unless otherwise noted, all further references to "rule" refer to the California Rules of Court.

case law, we are compelled to recommend disbarment to the Supreme Court.

BACKGROUND

On December 11, 2002, the Supreme Court suspended respondent from the practice of law for four years, execution stayed, and placed him on probation for three years on condition that he be actually suspended for two years and until restitution was made. He was also directed to comply with and perform the acts specified in rule 955, subdivision (a) and (c), within 30 and 40 days respectively,[2] after the effective date of January 10, 2003. The compliance date was February 19, 2003. The discipline arose from a prior proceeding wherein respondent was found culpable of misappropriating more than $20,000 from one of the limited partners of a limited partnership of which respondent was the general partner. He was also found culpable of acts involving moral turpitude. (*In the Matter of McCarthy* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364.) On May 14, 2003, respondent filed a Petition for Writ of Certiorari in the United States Supreme Court, which was denied on October 6, 2003.

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[2] In brief, rule 955(a) requires notification to all clients being represented by a suspended attorney to seek legal advice elsewhere due to his suspension; delivery of all papers and property to clients; refund of any unearned fees; and notification to opposing counsel of suspension. Subdivision (c) requires an affidavit showing full compliance with provisions of the order to be filed with the Clerk of the State Bar Court within a specified time.

DISCIPLINARY PROCEEDINGS

The Charges and Response

On September 9, 2003, a Notice of Disciplinary Charges (NDC), case number 03-N-02791 (Rule 955 matter), was filed by the State Bar alleging non-compliance with rule 955 as ordered by the Supreme Court, in violation of section 6103 of the Business and Professions Code.[3] Respondent filed his answer to the NDC on January 30, 2004.

On June 1, 2004, a second NDC, case number 04-O-11745 (probation violation matter), was filed contending that respondent failed to timely file his quarterly probation reports as required by order of the Supreme Court on December 11, 2002, in violation of section 6068, subdivision (k). He was further charged with making misrepresentations on the late reports in violation of section 6106. Respondent filed his answer on August 26, 2004. The two NDCs were consolidated and trial was set for December 1, 2004.

Respondent's answer to the NDCs established that in the rule 955 matter, the Supreme Court order of December 11, 2002, was properly served on respondent and required compliance with rule 955 no later than February 9, 2003, and February 19, 2003. On January 22, 2003, respondent received from the State Bar a reminder of his obligation to comply with rule 955, but he did not timely file the required declaration of compliance with the clerk of the court.

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[3] Unless otherwise noted, all further references to "section" refer to the Business and Professions Code.

In the probation violation matter, respondent admitted that among the conditions of probation, he was required to report quarterly, in writing, to the State Bar's Probation Unit no later than January 10, April 10, July 10 and October 10 of each year of probation confirming that he was in compliance with all provisions of the State Bar Act, the Rules of Professional Conduct of the State Bar and all conditions of probation. He also admitted that the first quarterly report due April 10, 2003, the second quarterly report due July 10, 2003, the third quarterly report due October 10, 2003, the fourth quarterly report due January 10, 2004, and the fifth quarterly report due April 10, 2004, were all filed on May 4, 2004. All reports represented that respondent had complied with all provisions of the State Bar Act and the rules of Professional Conduct of the State Bar of California. He admitted that his affidavit of compliance with rule 955, which was due on February 19, 2003, was filed on March 25, 2004.

The Hearing

On December 1, 2004, the hearing in this matter commenced. The parties announced "ready." A stipulation as to facts and the authenticity of all of the parties' exhibits except exhibit "T" was accepted and approved by the court. The court took judicial notice of all documents that constituted the file in this consolidated matter. At that time, counsel for respondent made an oral motion for a continuance based on the fact that respondent's witnesses had not been subpoenaed to attend the hearing. Counsel also stated that because the two cases had been consolidated, respondent was not aware of the issues to be tried. The court denied the motion, reminding the parties that a pre-trial conference had been held a week before with all

parties present and no objections to the trial date or any other issues had been presented at that conference.

Respondent was then called as a witness by the State Bar pursuant to Evidence Code section 776, and upon being sworn, he stated, "I respectfully decline to testify on the grounds that there is no way that this matter can be heard within two days, as has been indicated, despite the response that I made and the statement under the "N" [case] in this proceeding that our case would take five days. In addition, I am reluctant to call upon two very busy gentlemen who are my character witnesses, risking that they would come down here to testify in my behalf and might find that, for one reason or another, that their testimony would not be accepted. Those are basically and essentially the reasons that I refuse to proceed. They involve fundamental constitutional questions of notice and opportunity to be heard. So I will not testify at all in these proceedings, and request that the matter be put over until sometime after the first of the year, with the joint consent of me, as respondent, through my counsel, the State Bar and the Court."

The hearing judge reminded respondent that his statement did not address his [respondent's] availability on this date to testify about matters about which he was personally knowledgeable, and ruled the matter would go forward with respondent. Respondent refused to testify, insisting that the matter be heard continuously without interruption, and he instructed his counsel not to participate further. The hearing continued without further participation by respondent or his counsel, with evidence presented by the State Bar, including the parties'

stipulation,[4] the previously-authenticated exhibits, and the testimony of a witness. After presentation of the State Bar's case, the hearing judge again gave respondent an opportunity to participate in his defense. Respondent respectfully declined. A closing brief was filed by the State Bar, and respondent declined to file a closing brief.

Hearing Judge's Findings of Culpability

In the rule 955 matter, the hearing judge found respondent culpable of failure to timely comply with rule 955, in violation of section 6103. In the probation violation matter, the hearing judge found respondent failed to comply with conditions of probation, in violation of section 6068, subdivision (k), and was culpable of conduct involving moral turpitude by making misrepresentations in his five quarterly reports, in violation of section 6106.

The hearing judge found respondent's prior disciplinary record of wilful misappropriation and conduct involving moral turpitude to be an aggravating factor. He also found respondent's failure to participate in this proceeding, including his obstructive tactics at trial, to be further evidence of aggravation.

Normally, as the hearing judge observed, respondent's cooperation with the State Bar by entering into a stipulation would be given weight in mitigation. However, the hearing judge found that respondent's refusal to participate in the hearing, after denial of his motion for a

[4] The stipulation as to 11 facts was signed by deputy trial counsel Timothy Byer and respondent's counsel Henry Heuer on November 22, 2004. Respondent McCarthy signed his acceptance of the stipulation on December 1, 2004.

continuance, undercut any weight which would have been accorded to his act of cooperation. No evidence in mitigation was found.

On review, the State Bar filed its Opening Brief, but respondent did not file a Responsive Brief. The State Bar waived oral argument.

DISCUSSION

The findings below are unrefuted by respondent and are fully supported by the evidence, which we have reviewed. The evidence established that a copy of the Supreme Court order of December 11, 2002, was duly served on respondent. On January 22, 2003, Eddie Esqueda, Probation Deputy of the State Bar, wrote to respondent informing him of his obligations under the order of the Supreme Court. Respondent was reminded that compliance with rule 955 was due no later than February 19, 2003, and probation conditions were to be completed as set out in the order. Esqueda also attached to this reminder letter a copy of the Supreme Court order, conditions of probation, rule 955, rules 580-581, the Affidavit form, Quarterly Report forms with instructions, proof of payment information sheet, MPRE schedules, Notice of Counsel Representation, and information re the State Bar's Ethics School. Clearly, respondent was informed of his rule 955 obligations under the Supreme Court order and willfully chose to ignore them.

On August 4, 2003, deputy trial counsel Agustin Hernandez sent a letter to respondent's counsel enclosing a copy of the Rule 955 Compliance Declaration, which had been due on February 19, 2003, to be completed and filed

by respondent immediately. On August 27, 2003, respondent's counsel was again contacted by the State Bar and reminded that the Compliance Declaration had not been filed. Respondent's counsel notified the State Bar that respondent's position was that there was a stay of the order and he was not required to comply with the order because he had appealed this matter to the United States Supreme Court. The State Bar requested a copy of the appeal and documentation in support of respondent's position that a stay was in place. It also requested proof of authority supporting the alleged automatic stay of the California Supreme Court order.[5] The requested documentation was not made available to the State Bar, and in his stipulation of December 1, 2004, respondent admitted that he did not seek a stay of the order. We further note that the compliance date of rule 955 was February 19, 2003, and the petition for writ of certiorari was not filed until May 14, 2003. Respondent's claim of an alleged automatic stay is meritless as is any claim of an excuse for untimely compliance with rule 955.

On March 24, 2004, a rule 955 Compliance Declaration was filed by respondent indicating that on the date of compliance, respondent had no clients, had no property to which clients were entitled, had earned all fees paid to him and had no pending matters. This declaration was filed more than a year after the compliance deadline and

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[5] We take judicial notice of title 28 United States Code section 2101(f), which provides: "In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time. . . . The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court. . . ."

months after the reminder of his obligation to comply. Beyond any doubt, the entire course of respondent's conduct showed a classic, wilful violation of rule 955.

On May 4, 2004, the Quarterly Probation Reports due on April 10, 2003, July 10, 2003, October 10, 2003, January 10, 2004, and April 10, 2004, were filed, under penalty of perjury, indicating that respondent had complied with all provisions of the State Bar Act and Rules of Professional Conduct and that he did not practice law at any time during the preceding quarter. He also stated in his October 10, 2003 quarterly report, that he had filed his affidavit of compliance with rule 955 on October 6, 2003. In truth and in fact, he did not file his affidavit of compliance until March 24, 2004. In his April 10, 2004 quarterly report, respondent stated that he filed his affidavit of compliance with rule 955 on January 30, 2004, and on March 25, 2004. The record consisting of the NDCs, the responses to the NDCs, the Stipulation as to Facts, the untimely filed Affidavit of Compliance of rule 955 and the untimely filed Quarterly Reports all contradict his statements.[6] The hearing judge noted that "nowhere in any of the subject reports did respondent explain or even acknowledge the late filing of the report." Instead, respondent denied that he made a false representation that the reports had been timely filed, and that was known to him to be false, but admitted that the representations were inaccurate. Unquestionably, respondent's violations

[6] "It may be stated as a general rule that a pleading containing an admission is admissible against the pleader in a proceeding subsequent to the one in which the pleading is filed. [Citations.]" (*Dolinar a Pedone* (1944) 63 Cal.App.2d 169, 176.)

of probation conditions were wilful and dishonest, as charged and as found.

Respondent's last-minute attempt to delay his trial with such specious grounds as insisting that the trial would take five days instead of the scheduled two days, and demanding that this matter be heard continuously without interruption, is another effort to obstruct the disciplinary proceeding. His claim that the witnesses had not been subpoenaed for trial only indicates that he had not prepared for trial. Respondent then conjured up the constitutional questions of notice and opportunity to be heard, alluding to the fact that somehow consolidating the two cases for trial made unclear the issues to be tried. This is again meritless since he had previously admitted the charges in his responses to the NDCs. Although respondent has not urged any issue on review, in our independent analysis, we see no error of fair notice or opportunity to be heard.

The hearing judge made his discipline recommendation in the rule 955 violation matter and in the probation condition violation matter of four years' actual suspension. However, we note that in recommending the discipline, without relying on any supporting cases, the hearing judge did not consider a critical legal issue in this rule 955 matter: whether respondent's failure to comply with Rule 955 and the Supreme Court order was "wilful." (See, e.g., *Hamilton v. State Bar* (1979) 23 Cal.3d 868, 873-874.) Our independent review of the record, confirmed by clear and convincing evidence, shows that even after several reminders by the State Bar to respondent and to his counsel that the compliance affidavit must be filed, respondent still chose not to timely file his compliance affidavit, giving as an unreasonable excuse the fact that he believed there

was a stay of the order. We found, without a doubt, the wilful violation of rule 955. "Wilfulness" in the rule 955 context does not require bad faith; rather, it requires only a "'general purpose or willingness' to commit an act or permit an omission." (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.) In addition, we found respondent to be in wilful violation of his probation conditions. It has been held that an attorney probationer's filing of quarterly probation reports is an important step toward the attorney's rehabilitation. (*In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 152.) When, as here, "an attorney commits multiple violations of the same probation condition, the gravity of each successive violation increases." (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 531.)

We are troubled, as was the hearing judge, by respondent's conduct and his indifference to his responsibilities as an officer of the court, which demonstrate that he does not fully appreciate the seriousness of his conduct and which cast doubt on his credibility. His cavalier attitude toward the disciplinary system convinces us that respondent does not have the ability or willingness to conform to professional norms for the protection of the public and the administration of justice. This is corroborated by his failure to timely file his answer to the NDCs, to timely file his affidavit of compliance with rule 955, to timely file his quarterly reports, to timely prepare for trial, and to file a responsive brief on review.

DISCIPLINE

Our mandate in disciplinary proceedings is to protect the public, the legal profession and the courts and to maintain the highest professional standards for attorneys. In doing so, we look initially to the standards for guidance in determining the appropriate discipline. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof Misconduct (Standards).) Standard 1.6 provides for an appropriate sanction to encompass a balance of the aggravating and mitigating circumstances. In this case, there are aggravating circumstances but no mitigating circumstances. Standard 1.7 provides that where a member has a record of prior discipline – as in this case, a two-year actual suspension – the degree of discipline imposed in the current proceedings shall be greater than that imposed in the prior proceeding. Standard 2.3 calls for suspension or disbarment for offenses involving moral turpitude. We also note that rule 955, subdivision (d), provides its own guidance on discipline: "willful failure to comply with the provisions of this rule constitutes a cause for her disbarment or suspension. . . ."

Along with the standards, we look to similar proceedings to recommend discipline consistent with discipline imposed therein. It was well established early in the history of this court that the wilful failure to comply with rule 955, absent substantial mitigating circumstances, warrants disbarment: *Bercovich v. State Bar* (1990) 50 Cal.3d 116; *Powers v. State Bar* (1988) 44 Cal.3d 337; *Dahlman v. State Bar* (1990) 50 Cal.3d 1088; *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382; *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439; *In the Matter of Babero* (Review

Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322; *Lydon v. State Bar* (1988) 45 Cal.3d 1181; and *Hamilton v. State Bar, supra,* 23 Cal.3d 868.

In reviewing the foregoing cases, we find the common themes of *wilful* failure to comply with rule 955 and of a continuing disregard and indifference by the attorney to obligations and responsibilities as a member of the Bar. We also find a pattern of failure to cooperate in the disciplinary proceedings. In each case, disbarment was found to be appropriate.

We also recognize that there have been exceptions to disbarment for wilful violations of rule 955. (See, e.g., *Shapiro v. State Bar* (1990) 51 Cal.3d 251, *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527, *Durbin v. State Bar* (1979) 23 Cal.3d 461.) Discipline imposed was one year actual suspension, thirty days' actual suspension and six months' actual suspension, respectively. However, these cases are distinguishable in that the violations were extremely minor, i.e., the compliance declarations were filed much closer to the due date or there were quite substantial mitigating circumstances.

This case presents a clear, wilful violation of rule 955, which, standing alone, warrants a recommendation of disbarment. However, the added findings of wilful violation of probation conditions coupled with misrepresentations, without any mitigating factors, further compel us to recommend disbarment for the protection of the public, the courts and the legal profession.

RECOMMENDED DISCIPLINE

We recommend that Charles C. McCarthy be disbarred and his name be stricken from the roll of attorneys in this State.

Costs

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

Pursuant to the provisions of Business and Professions Code section 6007, subdivision (c)(4), respondent is ordered enrolled inactive upon personal service of this opinion or three days after service by mail, whichever is earlier.

WATAI, J.

We concur:

STOVITZ, J.

EPSTEIN, J.